

Oregon Department of Agriculture - Farmers' Market Meeting March 28, 2007 - Food Innovation Center, Portland, Oregon

Attendees; Karen Wagner - OFMA, Anthony Boutard, Lynn Youngbar - Portland Farmers' Markets and Board of Agriculture, Ginger Rapport - Beaverton Farmers' Market, Dianne Stefani-Ruff - Portland Markets, John Eveland - Gathering Together Farms, Rebecca Landis - Corvallis-Albany Farmers' Markets, Tom Denison - Denison Farms, (on the phone) Eamon Molloy Portland Farmers' Markets, Dalton Hobbs, Ron McKay, Mike Govro and Ellen Laymon from Oregon Department of Agriculture (ODA).

Mike called the meeting to order at 1:08 p.m. with a welcome and introductions followed by an outline for the meeting. The meeting agenda will begin with a history of farmers' markets in Oregon, how we should move forward and to answer questions. Today will be the start of the public process for determining how farmers' markets will be handled in Oregon.

Ground rules were established, Ellen will be taking minutes which will be distributed electronically and to OFMA and then posted on the ODA website. During the discussion, one person at a time will speak.

Mike gave a summary of the history of farmers' markets in Oregon.

- 1999 growth of farmers' markets started, 1st meeting convened to discuss farmers' markets. Feedback from the farmers' market industry indicated the industry did not want licensing and regulations, and did not think they were necessary. ODA agreed to only monitor the activities in the markets. Farmers' Markets guidelines were produced that included best practices.
- 2 years later ODA learned guidelines were not enforceable. ODA finds itself in a regulatory no man's land. ODA has no rules except food code requirements for grocery (floors, walls, ceilings, restrooms) which are not appropriate for farmers' markets.
- During the monitoring visits since 1999 some of the reports done included observations of temperature abuse on potentially hazardous foods and inadequate hand washing while handling potentially hazardous foods or unpackaged foods.

Mike explained the reasons that brought the meeting together today.

1. ODA has talked to the Attorney General (AG) who has indicated her initial reading of ORS 616 suggests that farmers markets meet the definition of a food establishment and should be licensed.
2. Legislature has asked what ODA is doing to regulate the farmers' markets.
3. Input from the grocery industry that they would like to operate like the farmers' markets. They feel there is a discrepancy between how they are handled and the farmers' markets are handled. They are also concerned

that the markets receive ODA inspection, but do not pay license fees as other sectors of the food industry do.

Lynn asked for clarification on status of Farmers' Markets being a food establishment and how does an oral opinion differ from a written opinion.

Dalton responded that once the opinion is written the flexibility is taken out of the regulation.

Rebecca added to the history of farmers' markets in Oregon.

- Since 1995 ODA has been informed of frailties of Administrative Rule. Farm stands and other similar outlets can be exempted from certain requirements, but the sentence in the rules with this clause has an error that makes it read the opposite of its intent.
- Also, there was a rewrite of the 2003 farmers' market's guidelines, with a minor change in 2004. There never was any illusion of force of law.

Mike described the distinction on 'rule' under guidelines.

Rebecca stated that farmers' don't distinguish between guidelines, rules, regulations or laws. Farmers are following the guidelines as if they have the force of law.

Mike talked about the 2005-2007 legislative session that put ODA's fee structure in statute. A bill was introduced by industry and passed by the legislature that apportions ODA licenses according to the time ODA spends in each industry. The grocery industries inquired about the payment equity, since grocery stores pay a license fee and get inspected, while farmers' market gets inspected and do not pay a license fee.

Rebecca stated that the 2005 Legislative session was not farmers' market friendly, vendors were not able to participate in legislative meetings and took a hit on fees; OFMA was not able to participate either.

Diane asked if all Food Safety industry segments are paying, Ron McKay responded in the affirmative and went on to explain the Food Safety licensing fee structure.

Ginger - How often does Food Safety run into non-profits? Mike responded by explaining more on the licensing structure by industry and the how fee is based on gross annual sales. Ginger asked follow up question, would it be gross annual sales by vendors collectively? Mike responded that was not clear, it might be like retail food markets.

Rebecca suggested if there were things groceries wanted to do that are outside and safe, ODA should look for ways to make them happy without hurting farmers' markets.

Mike talked about how farm stands are treated. Administrative rule exempts farm stands in which the farmer is selling their own produce on their own land. Farm stands can also sell produce other than their own, but then are required to be licensed, making sure that food safety is addressed. In rule (OAR 603-025-0030) the word 'not' is missing, leading to some confusion. AG says that farmers' market cannot be exempt in

rule, because a food establishment is defined in statute. A regulation cannot exempt a requirement that is in law.

Rebecca asked if Mike was implying that the exemption for farm stands is invalid? Mike responded produce stands can be exempted from some sanitation requirements, but the question of whether farm stands can be exempted in rule needs clarification. It may be in rule only to clarify that ODA (Food Safety Division) does not regulate farm production and sales from the farm.

Ron McKay said any new regulation or regulation change needs to be given to the AG for review to determine that there are not any conflicts with existing statutes.

Rebecca stated she couldn't believe this rule was made without any legal review, even if it was 40 years ago.

Lynn suggested that we should discuss the rules.

Mike suggested that ODA's opinion is that we should process with Rulemaking; he didn't think the food code is an appropriate set of rules for farmers' markets. This is the reason we are forming a rules advisory committee.

Lynn asked if that was like making guidelines into rules? Mike responded we need to make rules that apply to farmers' markets and other types of events, i.e. industry wide rules for outdoor handling.

Eamon asked if the grocery stores want to move their produce to the parking lot or sell farm direct commodities in their parking lots? Mike and Dalton both responded that grocery stores want to move their produce outside.

Rebecca asked if the grocery stores couldn't see a difference between moving their produce outside and what the farmers' markets are trying to do, which is direct marketing. Mike responded groceries do not see a distinction.

Tom stated that farmers' markets make a distinction between produce picked yesterday and sold at the market as more safe than produce being picked 3 weeks ago selling in the grocery store.

Mike explained about the CDC risk factors that apply at the farmers' markets.

- Personal hygiene
- Cross contamination
- Temperature abuse
- Handling of ready to eat foods at point of sale
- Sampling of ready to eat foods
- Dispensing ready to eat foods

Rebecca stated there is not much opportunity for cross contamination because few if any vendors are selling and sampling both meats (or other potentially hazardous foods) and fruits and vegetables.

Mike explained in reports from market visits, inadequate cooled potentially hazardous foods are a common observation. If make rules they will probably be smaller than the current farmers' market guidelines or maybe just include the potential risk factors.

Ginger asked who is responsible for the infraction, farmer or the market manager? Mike responded that currently it is just noted on the inspection report.

Diane asked which processors are not licensed? Mike responded that there should not be any unlicensed processors at the farmers markets.

Ron stated that we are seeing things like pickled garlic & acidified foods that are dangerous and they just show up at the markets.

Rebecca suggested a C & D should be issued. Rebecca followed up that she was the only note taker at the 4-25-2006 meeting on current licensing where a sur-charge was suggested on current licensing of vendors.

Dalton interjected that we need some regulatory groundwork for the farmers' markets, and who is paying for it needs to be determined.

Rebecca talked about what is already on the table; there are contractual arrangements with ODA for the WIC program and food stamps. Why can't we do the same for farmers' markets food safety? She would control by contractual arrangement rather than a fee causing small farmers out of business.

Mike asked if that was a concern about running markets out of business? Will 50 dollars a year put the markets out of business? Rebecca responded yes. Lynn asked about the gross annual sales answer.

Lynn recorded some unanswered questions on the board.

Questions that need answers.
1. Define the difference between retail food establishment and temporary food establishment.
2. What legal level; statutory/rule/contract?
3. Assumption of liability
4. Fee structure based on market income? Vendor sales?
5. Definition & distinction of farmers' market & direct sales
6. License markets or license vendors/farms or exempt?

Dalton explained that a contract is not on the table; statute or regulation is the only option. He then explained about the rulemaking process. Cannot make a rule in conflict with the law and you cannot unilaterally exempt farmers' markets. We can write regulations under the law or move the process to the legislature in next session, have lobbyist, hearings to exempt farmers' markets in statute. He went on to explain the approach that ODA wants to take, let's do something positive, with no risk, no failure to farmers' markets and obey the charge from legislature.

Rebecca proposed the contract as an adjunct to rules.

Anthony said an informal opinion from AG is not good for developing policy. It is not well researched. The situation here is like the landlord versus tenant in a food court, where the individual restaurants are licensed and inspected. OFMA acts like a landlord, and does not take responsibility for or ownership of the vendor's food or equipment.

Dalton explained the liability on market and vendor if someone gets sick. ODA can get a written opinion from the AG, but be careful what you ask for.

ORS 616.205(10) has the definition for a food establishment:

(10) "Food establishment" means:

(a) Any room, building, structure or place, used or intended for use, or operated for storing, preparing, compounding, manufacturing, processing, freezing, packaging, distributing, handling or displaying food.

(b) The ground upon which such place or business is operated or used and so much ground adjacent thereto as is also used in carrying on the business of the establishment. The State Department of Agriculture may prescribe such additional area or places which, although they may not be contiguous or adjacent to the above area or establishment, may be included therein.

(c) Vehicles, machinery, equipment, utensils, tools, fixtures, implements and all other articles or items, used in operating or carrying on the business of a food establishment. used in operating or carrying on the business of a food establishment.

ORS 616.706 requires that food establishments be licensed:

616.706. (1) Except as otherwise provided in ORS 616.695 to 616.755, a person may not operate a food establishment without first obtaining and thereafter maintaining a license under this section.

Ron explained that ODA food safety does not go onto farm to inspect the produce, at some point between grower and sales we start the inspection process.

Rebecca said currently farm stands are in jeopardy.

Ginger stated that Beaverton wants ODA present at farmers markets. Problem is they are not a grocery, tough to compare farmers' market and a grocery but they realize they have to come to common terms.

Ron was asked what are we doing at farmers' markets? We want to provide a safe food supply for the public. There are politics involved and uniformity with other industries.

Lynn asked if a statute was necessary for farmers' markets. Dalton responded that this was an opportunity to come up with simple and best solution. We are under political pressure; it is hard to compare grocery and farmers' markets. The advisory group needs to give rational guidance to ODA, with a place to go with ensuring regulatory confidence.

John asked if ODA felt these issues could be handled without legislative action. Mike responded we could define in rule how markets are establishments. Ginger added that we could redefine in rule to make regulations.

Mike suggested making a definition for temporary food events in Division 25, because we can only license one person at one location.

Lynn asked if it could be called a direct food event, not a temporary food event, put farm direct into it.

Anthony stated that market managers should not be responsible for vendor's food; the vendor should be responsible. Current legislature & governor is sympathetic to farmers and farming (Tim Nesbitt). Better to do it this session. Dalton responded things are in flux at the Capitol.

Dalton suggested it would be necessary to put such a change in statute, that we license the markets with a tort exemption for the farmers' market or for the farmers direct.

Rebecca said that anything that is done would get the attention of grocers.

Tom said he didn't see this process having a good outcome for farmers and farmers' markets, based on what he was hearing at this meeting.

Ginger requested an outline of what the proposal would look like.

Lynn asked about tort in statute.

Mike moved the conversation back to licensing each vendor separately that does sampling and needs hand washing.

Anthony suggested that since contamination from sampling is the biggest food safety risk, each sampler should be licensed, write regulations for them and charge them a license fee. He thought that the minimum fee of \$131 wouldn't be a problem for him.

Rebecca stated that we couldn't quit caring about the farm stands.

Anthony responded it only applies to direct sales with no intermediate, not retail (if the booth is dirty, the customer will walk away.)

Rebecca reiterated that we are talking about direct marketing.

Dalton talked about Anthony's approach, if do more than sell raw produce, that is the threshold for license issued at the vendor level. Dalton put a matrix on the white board.

Triggers	Market level licensing	License (USDA, HACCP, ODA)
1. Sampling, <ul style="list-style-type: none"> -Market co-operative 	X	
2. Hazardous Foods <ul style="list-style-type: none"> -Meats -Dairy -Seafood 		X X X
3. Ready to Eat <ul style="list-style-type: none"> -Bakery 		X

Someone stated that \$131 annual fee will prevent vendors from selling at the market, can market get a sampling license for all vendors sampling at the market?

Eamon asked if we could have a license like Health Division does for 6 or more temporary markets at a market. Dalton talked about license fee figure. If a market does 5 million in sales a year, license fee is \$500, recover some of that cost for sampling. There are two ways to go, license the samplers or license the market for all vendors sampling. Minimum ODA can go is \$131/year.

Anthony reiterated that the farmer should hold the license.

Ginger asked who other than a sampler needs a license? Mike responded a fish seller for example.

Tom talked about an experience in 1998 when he had packed his lettuce in coolers on his way to the market and got a call from ODA about a preliminary positive e-coli result on his lettuce. He did not take his lettuce to the market and on Monday he got another call from ODA saying that the result was a false positive. Ron asked follow up questions because ODA has not done pesticide samples or any other sampling of produce since 1995.

Dalton talked about licensing matrix,

- License the market?
- License the market co-operative?
- Sampling license by ODA?
- We visit times/year
- Attend annual meetings?
- Write guidelines?

Tom asked why ODA didn't take any spinach samples.

Rebecca said that if we do this at all, we should only do gross annual market revenue.

Mike returned the conversation to suggest that a rules advisory committee should be formed, meet regularly (except during the farmers' markets season).

Diane asked for a timeline. Mike suggested not before July because of farmers' markets, can set a conference call if we like. Whatever we develop through this process would not be in effect until the 2008 season. Rebecca suggested moving towards January. Mike explained a little about the rulemaking process, if want rules by April 2008, we need to go back 60-90 days to have meetings, public hearings, proposed rules and comment periods.

Rebecca asked who would be the hearings officer? Another Agency? A third party? Ron responded that a hearings officer is a facilitator and does not regulate or make comment.

Lynn suggested meeting every 6 weeks to allow for conversation and to vet with farm direct folks. At public hearing, advisory, all interested parties, including groceries can attend. Shoot for May or June this year.

Tom stated that 99.8% of people do not know about this movement to make regulations for farmers' markets.

Dalton suggested that promulgated rules don't have to cause a firestorm.

Ron talked about the all industry group. Talked about comment period varying.

Rebecca asked for a press release in the Capitol Press.

Lynn asked again for the timeline.

Dalton suggested that we could

- Hold public meetings around the State, or
- Rules advisory committee can develop rules

Dalton said the ODA preference is for rules advisory committee to develop the rules and then to hold public meetings and then publish the rules.

Rebecca was concerned that the advisory rule committee would be full of lobbyists representing each license type (and thus segments of the grocery industry) and that they'd "eat OUR lunch."

Mike talked about the fiscal impact statement that is due with this also.

Ginger asked for a list of non-negotiable points.

Rules Advisory Committee needs to include industry, consumers, processors, and representatives from all over the State. Who isn't at the meeting today?

Provide comments to OFMA.

Meeting closed at 3:08 p.m.

(Respectfully submitted, Ellen Laymon, minute taker.)